



**Muya & another v Directline Assurance Company Limited; Mungai (Interested Party)
(Civil Case E012 of 2024) [2025] KEHC 5821 (KLR) (Civ) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5821 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E012 OF 2024

TW OUYA, J

MAY 8, 2025

BETWEEN

NANCY MUYA 1ST APPLICANT

PETER KURIA 2ND APPLICANT

AND

DIRECTLINE ASSURANCE COMPANY LIMITED RESPONDENT

AND

KIMEMIA MUNGAI INTERESTED PARTY

RULING

1. The Notice of Motion Application before the Court is dated 20th May 2024 and is premised under Sections 1, 1A and 3A of the Civil Procedure Act as read together with Order 1 Rules 3 and 5; Order 10 Rule 11, and, Order 22 Rule 22 of the Civil Procedure Rules. The Applicants are seeking the following Orders as against the Interested Party:

1.Spent.
2. That pending the hearing and determination of this Application, this Honorable Court be pleased to issue an order suspending, lifting and/or staying execution of warrants of arrest issued against the 1st and 2nd Applicants on 23rd May 2024 in Thika Small Claims Comm E505 of 2022 Kimemia Mungai Versus Nancy Muya and Peter Kuria.
3. That pending the hearing and determination of declaratory suit, this Honorable Court be pleased to issue an order suspending, lifting and/or



staying execution of warrant of arrest issued against the 1st and 2nd Applicants on 23rd May 2024 in Thika Small Claims Comm E505 of 2022 Kimemia Mungai Versus Nancy Muya and Peter Kuria.

4. That the costs of this suit be provided for.”
2. The Application is supported by the Affidavit sworn jointly by Nancy Muya and Peter Kuria (the 1st and 2nd Applicants herein) on 24th May 2024.
3. The Interested Party filed suit against the 1st and 2nd Applicants before the Thika Small Claims Court in Small Claims Comm E505 of 2022 arising out of an accident which occurred on 9th July 2020 between the 1st and 2nd Applicants’ motor vehicle registration number KCD 142H and the Interested Party’s motor cycle registration number KMER 536B.
4. The trial Court, vide a judgment delivered on 19th January 2023, ruled in favour of the Interested Party and found the 1st and 2nd Applicants to have been 100% liable for the aforesaid accident. The Court directed the 1st and 2nd Applicants to render general damages amounting to Kshs. 320,000 and special damages amounting to Kshs.119,278 to the Interested Party, in addition to Costs of the suit in the amount of Ksh.58,600 plus Interests on all three items enumerated above at Court rates, resulting in the entire decretal sum of Kshs.546,198.
5. It was the 1st and 2nd Applicants’ averment that at the time of the accident dated 9th July, 2020, their Motor Vehicle Registration Number KCD 142H was validly insured by the Respondent herein through Policy Number 00100766/000001.
6. The 1st and 2nd Applicants further averred that the Interested Party filed a Notice to Show Cause dated 26th January 2024 seeking the issuance of warrants of arrest against them for failure to satisfy the entire decretal sum of Kshs. 546,198, which Application was allowed by the Court through a Ruling delivered on 23rd May 2024.
7. The 1st and 2nd Applicants deposed that the Respondent was fully aware of the proceedings before the trial Court in respect of Small Claims Comm E505 of 2022 Kimemia Mungai Versus Nancy Muya and Peter Kuria, however, the Respondent neglected to satisfy the Interested Party’s claim. They annexed a copy of Statutory Notice dated 29th August 2023 issued by the Interested Party’s Advocates to the Respondent, a Demand Letter dated 29th August 2022 and a Letter dated 20th February 2023 to buttress the averment that the Respondent was aware of the proceedings in Small Claims Comm E505 of 2022.
8. The 1st and 2nd Applicants subscribed to the position that as they have filed a declaratory suit, which suit will be rendered nugatory, thereby, occasioning them substantial loss which cannot be compensated by way of damages as well as immense suffering upon themselves unless the Court grants an Order suspending, lifting and/or staying the warrants of arrest dated 23rd May 2024. They deposed that they stand to suffer execution which ought to be borne by the Respondent.
9. The 1st and 2nd Applicants added that the subject suit was filed without unreasonable delay and expressed their readiness to furnish such security as the Court may direct for the due performance of the Orders of the Court.

The Interested Party’s Response

10. The Interested Party resisted the suit through the Replying Affidavit sworn by Kimemia Mungai (the Interested Party herein) on 29th August 2024. He deposed that prior to seeking warrants of arrest as



against the 1st and 2nd Applicants, he had filed an application to have the Applicants' goods attached which resulted in a proclamation dated 15th August 2023 through which the Applicants' nine (9) Motor Vehicles were proclaimed. He added that the Applicants subsequently frustrated all efforts to attach the proclaimed goods/motor vehicles.

11. It was the Interested Party's further averment that the Applicants mounted an application dated 16th August 2023 seeking a stay of execution of the Judgment dated 19th January 2023, which application was dismissed by the Court on 7th December 2023. Thereafter, the Interested Party instituted proceedings seeking the Applicants' committal to civil jail.
12. The Interested Party deposed that he executed a consent with the Applicants wherein they committed to settle the entire decretal sum pursuant to which consent the Applicants covenanted that they would render an initial payment of Ksh.50,000 to the Interested Party. However, the Applicants subsequently dishonored the aforementioned consent by failing to pay the aforesaid initial sum of Ksh.50,000.
13. The Interested Party subscribed to the position that he is a stranger to the dispute between the Applicants; furthermore, in the interests of justice the Applicants ought to settle the Interested Party's claim first and, thereafter, pursue their claim against the Respondent.
14. The suit was dispensed by way of written submissions.

The Applicants' Submissions

15. The 1st and 2nd Applicants filed submissions dated 9th September 2024 through their Counsel. It was submitted that pursuant to the provisions of Section 10(1) of the Insurance (Motor Vehicle Third Party) Act, it is mandatory for an Insurance Company to satisfy a claim where Judgment has been entered against its insured. They added that existence of Policy Number 00100766/000001 has not been disputed by either the Respondent or the Interested Party.
16. Relying on the holding of the Court in the case of Charles Makenzi Wambua V Africa Merchant Assurance Company ltd & Another [2014] eKLR, the Applicants argued they are entitled to the Orders sought in the instant suit so that they can pursue the case against the Respondent for the benefit of the Interested Party.

The Interested Party's Submissions

17. The Interested Party filed written submissions dated 29th December 2024 through his Counsel whereby, one issue for determination by the Court was identified, namely:

Whether or not the Court should stay execution of a lawful decree issued in pending the hearing and determination of this suit in the validity of the existing consent on repayment duly executed by the parties herein and adopted as an Order of the Court.
18. It was submitted that notwithstanding the existence of a Third- Party Insurance Policy, the Applicants bear the primary obligation of settling the Decree. Guidance was placed in the holding of the Court in the cases of Daniel Mutua Musyoki V Amaco Insurance Company Ltd & Another (2023) eKLR; and, Kimani V Monarch Insurance Company Ltd; Muigai (Interested Party) (Civil Suit E009 of 2024) [2024] KEHC 8362 (KLR).
19. It was the Interested Party's further submission that the Applicants violated the consent executed with the Interested Party and it is only after the Interested Party sought for warrants of arrest them that they lodged the declaratory suit and the present cause.



20. Citing the reasoning of the Court in the case of Alois Ochieng' Ndege V Explico Insurance Company Limited; Jane Wachuka Munene (Interested Party) [2022], the Interested Party argued that the subject suit was commenced by the Applicants 22 months following delivery of the Judgment sought to be stayed which amounts to unreasonable delay.
21. It was further submitted that the Applicants failed to demonstrate that they stand to suffer substantial loss which cannot be compensated by way of damages, because they have recourse through the declaratory suit filed against the Respondent through which they stand to obtain reimbursement of the decretal amount.
22. The Interested Party pointed out that the Applicants failed to pay Ksh.50,000 as directed by the Court towards satisfaction of the decretal sum, which evinces their propensity to disobey Orders of the Court.

Analysis

23. Having carefully considered the grounds of appeal and the parties rival written submissions together with all the authorities cited, I find that the issues arising for my determination revolve around two issues: Whether the suit is merited and, who shall bear the costs of the suit?
24. The Applicants' main prayer is for a stay of execution of the warrants of arrest dated 23rd May 2024 pending the outcome of both the declaratory suit and the instant cause.
25. Section 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act stipulates as follows:

“If, after a policy of insurance has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of section 5 (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy, the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

Provided that the sum payable under a judgment for a liability pursuant to this section shall not exceed the maximum percentage of the sum specified in section 5(b) prescribed in respect thereof in the Schedule.”

26. Section 5 of the Insurance (Motor Vehicle Third Party Risks) Act provides as follows:

“In order to comply with the requirements of section 4, the policy of insurance must be a policy which—

- (a) is issued by a company which is required under the Insurance Act, 1984 (Cap. 487) to carry on motor vehicle insurance business; and
- (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of, or bodily injury to, any person caused by or arising out of the use of the vehicle on a road.”



27. In the case of Daniel Mutua Musyoki vs Amaco Insurance Company Ltd & Another (2023) eKLR, the Court appreciated the meaning and import of Section 10(1) of the Insurance (Motor Vehicle Third Party Risks) Act in the following terms:

“The primary duty of settling the decree falls squarely on the Applicant. In the event the 1st Respondent as his insurer fails to satisfy the decree, the Applicant will still be called upon to satisfy the same. Nothing prevents the Applicant from settling the decretal sum and then suing the Respondent for compensation or reimbursement.

In my opinion, the suit against the 2nd respondent was ill conceived. He is not privy to the contract between the applicant and the 1st Respondent, who has conveniently failed to file any response. The matter is between the applicant and its insurer. Period.

Entertaining this application and the suit for that matter will set an unacceptable precedent whereby any insured entity, on its own motion or covertly urged by its insurance company, will be moving to court to seek orders of this nature. This will defeat the purpose of the Act, which was to protect the rights of successful judgment holders in suits against a party who is insured under a policy falling within the ambit of the Act.”

28. Similarly, the Court in the case of Stephen Amollo Odhiambo Vs Monarch Insurance (2022) KEHC 15610 (KLR) proclaimed as follows:

“I must however state that the primary obligation of settling the decree falls squarely on the plaintiff and in the event that the Defendant as his insurer fails to satisfy the decree, the plaintiff will still be called upon to satisfy the same. In other words, the mere fact that the Defendant is bound both contractually and statutorily to satisfy the decree does not absolve the plaintiff from meeting his obligations under the tort of negligence.

- ii. In addition, nothing prevents the plaintiff from settling the decretal sum and then enforcing that same decree against the Defendant for reimbursement. That in my view will not render this suit nugatory as the plaintiff can, upon settling the decree, amend his plaint and seek for reimbursement of the monies paid to the interested parties.”

29. The subject suit concerns the granting of an order for a stay of execution. Order 42, Rule 6(2) of the Civil Procedure Rules, 2010 sets out the conditions to be met when it comes to an application for a stay of execution as follows:

- a) The application must be brought without unreasonable delay;
b) The applicant must demonstrate that substantial loss may result; and
c) Provision should be made for security.”

30. In the instant suit, the Interested Party argued and submitted the Applicants filed the instant suit following inordinate delay as it was commenced some 22 months following the issuance of warrants of arrest against them. Upon perusal of the record, the Court notes that the warrants of arrest sought to be stayed were issued on 23rd May 2023 while the present suit was instituted on 20th May 2024. In the premises, the Court holds and finds that while it is obvious that there has been a prolonged delay, that delay is not so inordinate as to cause the Court not to consider the Applicants’ suit.



31. Next, the Court turns to the question of substantial loss. In the case of Alois Ochieng' Ndege v Explico Insurance Company Limited; Jane Wachuka Munene (Interested Party) [2022] eKLR, which was relied upon by the Interested Party in his submissions, the Court understood the legal meaning and import of "substantial loss" as follows:

"[T]he legal position is that substantial loss entails that which has to be prevented by maintaining the status quo of the parties involved, otherwise the appeal will be rendered nugatory."

32. With regard to the third condition concerning offer of security, the Applicants have offered to make provision for security for the due performance of the decree as may be directed by the Court.

33. In the case of Kimani v Monarch Insurance Company Limited; Muigai (Interested Party) (Civil Suit E009 of 2024) [2024] KEHC 8362 (KLR) (3 July 2024) (Ruling), the Court reasoned as follows:

"I don't see how a defendant can file a fresh suit and seek to stay another suit from which he never appealed.

36. I agree that Section 5 of the Act is meant to protect the insured and the 3rd party. What I don't agree with is that the said section can be used by an insured to stay a decree issued against him. He should satisfy the decree and then seek compensation from its insurer, by enforcing the contract between them."

34. It is instructive to note that the Interested Party is not a party in the declaratory suit brought by the Applicants against the Respondent. Furthermore, the Interested Party already has a judgment in his favor and is entitled to enjoy the fruits thereof. In light of the foregoing, the Court finds that the Applicants' Notice of Motion Application dated 20th May 2024 is unmerited and is hereby dismissed. The Interested Party being the successful party in the instant cause is entitled to and is hereby awarded the costs thereto, pursuant to the provisions of Section 27 of the Civil Procedure Act.

Determination

35. The Applicants' Notice of Motion Application dated 20th May 2024 is hereby dismissed with costs to the Interested Party.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 8TH DAY OF MAY, 2025.

HON. T. W. OUYA

JUDGE

For 1st and 2nd Applicants..... Kabata

For Interested Party...Muiruri

Court Assistant...Jackline

